



## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 22-C0002]

**Vornado Air, LLC**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

The Commission publishes in the Federal Register any settlement that it provisionally accepts under the Consumer Product Safety Act. Published below is a provisionally accepted Settlement Agreement with Vornado Air, LLC, containing a civil penalty in the amount of seven million, five hundred thousand dollars (\$7,500,000), subject to the terms and conditions of the Settlement Agreement.<sup>1</sup>

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by **[INSERT DATE 15 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to Comment 22-C0002, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (240) 863-8938 (mobile), (301) 504-7479 (office); email: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).

**FOR FURTHER INFORMATION CONTACT:** Caitlin O'Donnell, Trial Attorney, Division of Enforcement and Litigation, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; [codonnell@cpsc.gov](mailto:codonnell@cpsc.gov). **SUPPLEMENTARY INFORMATION:** The text of the Agreement and

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<sup>1</sup> The Commission voted (4-0-1) to provisionally accept the proposed Settlement Agreement and Order pertaining to Vornado Air, LLC. Chair Hoehn-Saric, Commissioners Baiocco, Trumka and Boyle voted to provisionally accept the Settlement Agreement and Order. Commissioner Feldman voted to take other action. Chair Hoehn-Saric, Commissioners Feldman and Trumka issued respective statements with their votes which can be found here: [Commissioners | CPSC.gov](https://www.cpsc.gov)

Order appears below.

Dated: July 7, 2022.

**Alberta E. Mills,**

*Secretary.*

**UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION**

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In the Matter of:

VORNADO AIR, LLC

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CPSC Docket No. 22-C0002

**SETTLEMENT AGREEMENT**

1. In accordance with the Consumer Product Safety Act (“CPSA”), 15 U.S.C. §§ 2051–2089, and 16 C.F.R. § 1118.20, Vornado Air, LLC (“Vornado” or “the Firm”), and the United States Consumer Product Safety Commission (“Commission”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order resolve staff’s charges set forth below.

**THE PARTIES**

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Vornado is a privately held company, organized and existing under the laws of the state of Delaware, with its principal place of business in Andover, Kansas.

**STAFF CHARGES**

4. Between 2009 and 2015, Vornado manufactured, distributed, and offered for sale approximately 350,000 VH101 Personal Vortex Heaters (“Subject Products”).

5. The Subject Products are “consumer products” that were “distribut[ed] in commerce,” as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. § 2052(a)(5), (8). Vornado is a “manufacturer” and “distributor” of the Subject Products, as such terms are defined in sections 3(a)(7) and (11) of the CPSA, 15 U.S.C. § 2052(a)(7), (11).

#### Violation of CPSA Section 19(a)(4)

6. The Subject Products contain a defect which could create a substantial product hazard and create an unreasonable risk of serious injury or death because they can overheat when in use, posing fire and burn hazards.

7. Vornado received and investigated multiple reports of overheating and fire involving the Subject Products. Despite possessing information that reasonably supported the conclusion that the Subject Products contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death, Vornado did not immediately report to the Commission.

8. In December 2017, Vornado received notice of a potential claim alleging that an elderly man succumbed to injuries sustained in a fire involving a Vornado space heater that was suspected to be one of the Subject Products.

9. In January 2018, Vornado filed an Initial Report with the Commission under 15 U.S.C. § 2064(b). In that report, the Firm stated that it had not yet confirmed that the heater involved in the fatal fire was a unit of the Subject Products.

10. In February 2018, Vornado filed a Full Report with the Commission under 15 U.S.C. § 2064(b) concerning the Subject Products.

11. Vornado and the Commission jointly announced a Fast Track recall of the Subject Products on April 4, 2018. The press release announcing the recall stated that the Subject Products can overheat while in use, posing fire and burn hazards, and that 15 fire incidents had been reported.

12. On August 22, 2018, after the Firm confirmed that one of the Subject Products was, in fact, involved in the fatal fire, the recall was re-announced. The press release included a description of the December 2017 fatal fire incident as well as an updated total of 19 fire incidents.

#### Failure to Timely Report

13. Despite having information reasonably supporting the conclusion that the Subject Products contained a defect or created an unreasonable risk of serious injury or death, Vornado did not notify the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3), (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

14. Because the information in Vornado's possession about the Subject Products constituted actual and presumed knowledge, Vornado knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

15. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Vornado is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

#### RESPONSE OF VORNADO

16. Vornado's settlement of this matter does not constitute an admission of the staff's charges as set forth in paragraphs 4 through 15 above, and Vornado denies staff's allegations that it failed to notify the Commission in a timely matter in accordance with section 15(b) of the CPSA and that there was any "knowing" violation of the CPSA as that term is defined in 15 U.S.C. § 2069(d).

17. At all relevant times, Vornado had a product safety compliance program, which included pre-market third-party laboratory testing of the Subject Products to applicable safety standards and rigorous quality assurance measures. Vornado took reasonable measures to monitor field reports and evaluate returned units of the Subject Products.

18. Vornado notified the Commission under section 15(b) and conducted a voluntary recall of the Subject Products under the Fast Track program prior to confirming product identification or causation of the reported fire that resulted in a fatality.

19. Vornado enters into this Agreement to settle this matter without the delay and unnecessary expense of litigation. Vornado does not admit that it violated the CPSA or any other

law, and Vornado's willingness to enter into this Agreement and Order does not constitute, nor is it evidence of, an admission by Vornado of liability or violation of any law.

#### AGREEMENT OF THE PARTIES

20. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products and over Vornado.

21. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Vornado or a determination by the Commission that Vornado violated the CPSA's reporting requirements.

22. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Vornado shall pay a civil penalty in the amount of seven million five hundred thousand dollars (\$7,500,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via <http://www.pay.gov>, for allocation to, and credit against, the payment obligations of Vornado under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

23. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Vornado to the United States, and interest shall accrue and be paid by Vornado at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). Vornado shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Vornado agrees not to contest, and

hereby waives and discharges any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Vornado shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

24. After staff receives this Agreement executed on behalf of Vornado, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16<sup>th</sup> calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

25. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) the Commission's final acceptance of this Agreement and service of the accepted Agreement upon Vornado, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

26. Effective upon the later of: (1) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Vornado, and (2) the date of issuance of the final Order, for good and valuable consideration, Vornado hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement:

- (i) an administrative or judicial hearing;
- (ii) judicial review or other challenge or contest of the Commission's actions;
- (iii) a determination by the Commission of whether Vornado failed to comply with the CPSA and the underlying regulations;

- (iv) a statement of findings of fact and conclusions of law; and
- (v) any claims under the Equal Access to Justice Act.

27. Vornado shall maintain a compliance program and a system of internal controls and procedures designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed, or sold by Vornado, and which shall contain the following elements:

- (i) written standards, policies, and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury has been reported;
- (ii) procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;
- (iii) procedures requiring that information required to be disclosed by Vornado to the Commission is recorded, processed, and reported in accordance with applicable law;
- (iv) procedures requiring that all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law;
- (v) procedures requiring that prompt disclosure is made to Vornado's senior management of any significant deficiencies or material weaknesses in the design or operation of such compliance program or internal controls that affect adversely, in any material respect, Vornado's ability to record, process, and report to the Commission in accordance with applicable law;
- (vi) mechanisms to effectively communicate to all applicable Vornado employees, through training programs or other means, compliance-related company policies and procedures to prevent violations of the CPSA;



- (vii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- (viii) Vornado's senior management responsibility for CPSA compliance; and
- (ix) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to CPSC staff upon request.

28. The Firm shall submit a report under CPSA section 16(b), sworn to under penalty of perjury:

- (i) describing in detail its compliance program and internal controls and the actions the Firm has taken to comply with each subparagraph of paragraph 27;
- (ii) affirming that during the reporting period the Firm has reviewed its compliance program and internal controls, including the actions referenced in subparagraph (a) of this paragraph, for effectiveness, and that it complies with each subparagraph of paragraph 27, or describing in detail any non-compliance with any such subparagraph; and
- (iii) identifying any changes or modifications made during the reporting period to the Firm's compliance program or internal controls to ensure compliance with the terms of the CPSA and, in particular, the requirements of CPSA section 15 related to timely reporting.

Such reports shall be submitted annually to the Director, Office of Compliance, Division of Enforcement and Litigation, for a period of three (3) years beginning 12 months after the Commission's Final Order of Acceptance of the Agreement. The first report shall be submitted 30 days after the close of the first 12-month reporting period, and successive reports shall be due annually on the same date thereafter. Without limitation, the Firm acknowledges and agrees that failure to make such timely and accurate reports as required by this Agreement and Order may constitute a violation of section 19(a)(3) of the CPSA.

29. Notwithstanding and in addition to the above, upon request of staff, Vornado shall promptly provide to CPSC written documentation identifying any material changes or improvements to the Firm's compliance program or internal controls and the effective date of those changes or improvements. Vornado shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and any personnel deemed necessary by staff, to evaluate Vornado's compliance with the terms of the Agreement.

30. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

31. Vornado represents that the Agreement:

- (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever;
- (ii) has been duly authorized; and
- (iii) constitutes the valid and binding obligation of Vornado, enforceable against Vornado in accordance with its terms. The individuals signing the Agreement on behalf of Vornado represent and warrant that they are duly authorized by Vornado to execute the Agreement.

32. The signatories represent that they are authorized to execute this Agreement.

33. The Agreement is governed by the laws of the United States.

34. The Agreement and the Order shall apply to, and be binding upon, Vornado and each of its successors, transferees, and assigns; and a violation of the Agreement or Order may subject Vornado, and each of its successors, transferees, and assigns, to appropriate legal action.

35. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

36. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the

Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

37. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

38. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Vornado agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

VORNADO AIR, LLC

Dated: 5/24/2022

By: /s/  
Randy Brillhart  
Vornado Air, LLC  
Chief Executive Officer

Dated: 5/24/2022

By: /s/  
Michelle Gillice  
Counsel to Vornado Air, LLC

U.S. CONSUMER PRODUCT SAFETY  
COMMISSION

Dated: 5/25/2022

By: /s/  
Caitlin O'Donnell  
Trial Attorney  
Office of Compliance and Field Operations



**BY ORDER OF THE COMMISSION:**

/s/

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Alberta Mills, Secretary  
U.S. Consumer Product Safety Commission

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